

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
June 5, 2003**

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, June 5, 2003, beginning at 2:00 P.M. at the Town of Warrenton Police Department, 333 Carriage House Lane, Warrenton, Virginia. Members present were Mrs. Margaret Mailler, Chairperson; Mr. John Meadows, Secretary; Mr. Maximilian A. Tufts, Jr.; and Mr. Mark Rohrbaugh. Also present were Mr. Paul McCulla, County Attorney; Ms. Kimberley Johnson, Zoning Administrator; Mr. Fred Hodge, Assistant Zoning Administrator; and Ms. Nancy Albert, Office Associate III.

MINUTES: On the motion made by Mr. Meadows and seconded by Mr. Rohrbaugh the Board of Zoning Appeals voted to defer the approval of the May minutes until the next scheduled meeting.

The motion carried unanimously.

LETTERS OF NOTIFICATIONS & PUBLIC NOTICE: Mr. Hodge stated that to the best of his knowledge, the cases before the Board of Zoning Appeals for a public hearing had been properly advertised, posted, and letters of notification sent to adjoining property owners. Ms. Albert read the Public Hearing Protocol.

VARIANCE #51377 JOHN D. PIVK (OWNER)

Applicant is requesting a variance from the side yard setback to construct an attached garage, identified as PIN #7915-33-9490, located at 7204 Sunrise Court, Scott District, Warrenton, Virginia. The public hearing has been closed.

Mr. Fred Hodge stated he received an email requesting to defer the variance until the next meeting.

On a motion by Mr. Meadows, seconded by Mr. Tufts, the BZA voted to defer the variance until the next scheduled meeting.

The motion carried unanimously.

**APPEAL #51456 WKCW RADIO (OWNER) & MERLE E. FALLON, ESQ.
(REPRESENTATIVE)**

Applicants are appealing a decision of the Zoning Administrator as to whether Section 2-506 Fauquier County Zoning Ordinance applies to radio towers, identified as PIN #6995-87-1781, located at 5562 Baldwin Street, Scott District, Warrenton, Virginia.

Mr. Merle Fallon, attorney for WKCW Radio, requested to defer the appeal until the next scheduled meeting.

On a motion by Mr. Meadows, seconded by Mr. Rohrbaugh, the BZA voted to defer the appeal until the next scheduled meeting.

SPECIAL PERMIT #51552 ORLEAN BAPTIST CHURCH (OWNER)

Applicant is requesting special permit approval to locate an addition to an existing place of worship, identified as PIN #6936-81-1341, containing approximately 1.42 acres, located at 6675 John Barton Payne Road, Marshall District, Orlean, Virginia.

Mr. Hodge stated that a BZA site visit was made this morning, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mr. Bill Miller appeared at the meeting representing the application and noted agreement with the staff report.

Mrs. Mailler asked if the 150 occupancy approved by the Health Department would be sufficient.

Mr. Miller stated that only for a funeral or special event would there be 150 people.

On a motion made by Mr. Tufts, seconded by Mr. Rohrbaugh, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to approve the special permit, with the following findings and conditions:

Findings

1. The proposed use will not adversely affect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully set forth.
3. The use will be compatible with the neighborhood in which it is to be located.
4. The application does comply with the specific standards which apply to the use in question, Sections 5-601 and 5-602 of the Zoning Ordinance.

SPECIAL PERMIT #51553 RUTH N. EMBREY (OWNER)

Applicant is requesting special permit approval to renew a special permit approved on October 4, 2001 to hold up to six yard sales a year, identified as PIN #7807-61-8750, located at 12505 Harpers Run Road, Cedar Run District, Bealeton, Virginia.

Mr. Fred Hodge stated he received a letter requesting to defer the special permit until the next meeting.

On a motion by Mr. Tufts, seconded by Mr. Meadows, the BZA voted to defer the special permit until the next scheduled meeting.

The motion carried unanimously.

SPECIAL PERMIT #51564 RIKA, LLC (OWNER)

Applicant is requesting special permit approval to construct a second residential structure for use in a previously approved residential care facility, identified as PIN #7828-40 -2249, located at 3493 Midland Road, Cedar Run District, Midland, Virginia.

Mr. Hodge stated that a BZA site visit was made this morning, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mrs. Cathy Fitzsimmons appeared at the meeting representing the application and noted agreement with the staff report. She stated the reason for the additional structure was to house males and females separately. The additional space in the main building would be used for recreation and group meetings.

Mrs. Mailler asked if Mrs. Fitzsimmons was aware of the Health Department letter relating to the commercial kitchen facility.

Mrs. Fitzsimmons stated the Health Department is confused about enlarging the home versus a second structure on the property.

Mr. Hodge stated for the site plan approval and certificate of occupancy Health Department approval is required.

Mr. Tufts asked what is the current number of occupants and Mrs. Fitzsimmons stated 8.

Mr. Rohrbaugh asked where the children are from and Mrs. Fitzsimmons stated they are at risk adolescents from Virginia referred by social workers and probation officers.

Mr. Meadows asked if the BZA approved 14 and Mrs. Fitzsimmons said yes.

Mr. Meadows asked if all incidents were reported to the Zoning Office and Mrs. Fitzsimmons said yes. She stated there were no complaints from the neighbors. There has been one death of a young man in the home.

Mr. Meadows asked to see the conditions of the previous permit and asked if there were any violations. Ms. Johnson apologized for not including the copies of the prior permit, with conditions and stated they were not available at the current meeting.

Mr. Meadows moved to defer the decision until the next meeting and Mr. Rohrbaugh seconded the motion.

Mrs. Fitzsimmons stated they are very involved in positive things. The Ruritan Club and High School would speak in their favor.

Ms. Johnson stated that staff had reviewed the application for compliance with existing conditions and found no violations.

Mr. Meadows withdrew his motion to defer and stated there must be a need for this type of facility. On a motion made by Mr. Meadows, seconded by Mr. Rohrbaugh, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to approve the special permit, with the following findings and conditions:

Findings

1. The proposed use will not adversely affect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully set forth.
3. The use will be compatible with the neighborhood in which it is to be located.
4. The application does comply with the specific standards which apply to the use in question, Sections 5-601 and 5-602 of the Zoning Ordinance.

Condition

5. The special permit is granted subject to the condition of site plan approval.

The motion carried unanimously.

VARIANCE #51590 JENNIFER K. ARMSTRONG (OWNER)

Applicant is requesting a variance from the railroad setback to construct a single family dwelling, identified as PIN #6011-63-9132, located on Fiery Run Road, Marshall District, Markham, Virginia.

Mr. Hodge stated that a BZA site visit was made this morning, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mr. and Mrs. Armstrong appeared at the meeting representing their application and noted agreement with the staff report.

Mrs. Mailler stated the measurement given did not seem to be correct based upon the Board's site visit this morning.

Mr. Meadows stated the measurement needs to be exact to grant the variance and may need to be deferred until the next scheduled meeting.

Mr. McCulla stated the Board cannot grant a variance higher because it was advertised.

Mr. and Mrs. Armstrong stated they would obtain the accurate measurement and would like to defer until the next scheduled meeting.

On a motion by Mr. Meadows, seconded by Mr. Rohrbaugh, the BZA voted to defer the variance until the next scheduled meeting.

The motion carried unanimously.

VARIANCE #51632 JEFFREY P. & DAWNITA T. CALDERONE

Applicants are requesting a variance from the rear property setback to construct a deck, identified as PIN #6985-79-9097, located at 6455 Imagination Way, Scott District Warrenton, Virginia.

Mr. Fred Hodge stated he received a letter requesting to defer the variance until the next meeting.

On a motion by Mr. Tufts, seconded by Mr. Rohrbaugh, the BZA voted to defer the variance until the next scheduled meeting.

The motion carried unanimously.

VARIANCE #51651 MARY MARSHALL HANSEN (OWNER)

Applicant is requesting a variance from the front yard setback to construct a porch, identified as PIN #6061-17-8456, located at 8579 Maidstone Road, Marshall District, Rectortown, Virginia.

Mr. Hodge stated that a BZA site visit was made this morning, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Ms. Hansen appeared at the meeting representing her application and noted agreement with the staff report. She stated the existing stoop is only 5 feet.

On a motion by Mr. Rohrbaugh, seconded by Mr. Meadows, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to approve the variance, with the following findings:

Findings

1. The property was acquired in good faith;
2. Strict application of the Ordinance would effectively prohibit or unreasonably restrict use of the property;
3. The granting of the variance will alleviate a clearly demonstrable hardship approaching confiscating, and is distinguished from a special privilege or convenience sought by the applicant.

4. The hardship or restrictions on the use of the property are by reason of:
 - (a) exceptional narrowness, shallowness, size or shape of the property at the time of the effective date of the ordinance;
 - (b) exceptional topographic conditions or other extraordinary situation or condition of the property;
 - (c) exceptional topographic conditions or other extraordinary situation or condition of property immediately adjacent thereto.
5. The variance will be in harmony with the intended spirit and purpose of the Ordinance, and would result in substantial justice being done.
6. The strict application of the Ordinance will produce undue hardship.
7. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity and is not of so general or recurring a nature as to make reasonably practical the formation of a general regulation to be adopted as amendment to the Ordinance.
8. The authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
9. The minimum variance that is necessary to afford relief is 7 feet 3 inches.

The motion carried unanimously.

VARIANCE #51657 MONTE R. & DANA K. SNEAD (OWNERS)

Applicants are requesting a variance from the front yard setback to construct a detached garage, identified as PIN #7925-00-7667, located at 7465 Kennedy Road, Cedar Run District, Nokesville, Virginia.

Mr. Hodge stated that a BZA site visit was made this morning, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mr. Snead appeared at the meeting representing his application and noted agreement with the staff report.

Mrs. Mailler asked why it was necessary for such a large garage and Mr. Snead stated he had three vehicles, needed storage space and a woodworking area.

Mr. Meadows pointed out the slope of the land, as well as it being a wet low area.

Mr. Tufts stated a letter from the adjoining property owner had been received and he asked about the right-of-way. Mr. Hodge stated the lot has two front setbacks.

On a motion by Mr. Meadows, seconded by Mr. Tufts, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to approve the variance, with the following findings:

Findings

1. The property was acquired in good faith;
2. Strict application of the Ordinance would effectively prohibit or unreasonably restrict use of the property;
3. The granting of the variance will alleviate a clearly demonstrable hardship approaching confiscating, and is distinguished from a special privilege or convenience sought by the applicant.
4. The hardship or restrictions on the use of the property are by reason of:
 - (a) exceptional narrowness, shallowness, size or shape of the property at the time of the effective date of the ordinance;
 - (b) exceptional topographic conditions or other extraordinary situation or condition of the property;
 - (c) exceptional topographic conditions or other extraordinary situation or condition of property immediately adjacent thereto.
5. The variance will be in harmony with the intended spirit and purpose of the Ordinance, and would result in substantial justice being done.
6. The strict application of the Ordinance will produce undue hardship.
7. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity and is not of so general or recurring a nature as to make reasonably practical the formation of a general regulation to be adopted as amendment to the Ordinance.
8. The authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
9. The minimum variance that is necessary to afford relief is 42 feet.

The motion carried unanimously.

SPECIAL PERMIT #51667 NEIL LYLE SEEK (OWNER) & MATTHEW G. & DENISE A. ONDROF (CONTRACT OWNERS)

Applicants are requesting special permit approval to locate a preschool in the existing single family dwelling, identified as PIN #7906-23-7318, located at 5298 Old Alexandria Turnpike, Scott District, Warrenton, Virginia.

Mr. Fred Hodge stated he received an email requesting to withdraw the special permit application.

On a motion by Mr. Tufts, seconded by Mr. Rohrbaugh, the BZA voted to withdraw the special permit.

The motion carried unanimously.

On a motion by Mr. Tufts, seconded by Mr. Rohrbaugh, the BZA voted to hold the next Board of Zoning Appeals meeting on July 10, 2003 at the Town of Warrenton Police Department.

The motion carried unanimously.

ADJOURNMENT: There being no further business before the Board, the meeting adjourned at 3:30 P.M.

Margaret Mailler, Chairman

John Meadows, Secretary

Copies of all files and materials presented to the Board are attached to and become a part of these minutes. A tape recording of the meeting is on file for one year.

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